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STATUTES RELATING TO TELEPHONE COMPANIES.

(Continued.)

Indiana also limited the rental charged for the use of telephones, by the statute in force from July 18, 1885 (Laws, p. 227; Rev. Stat. ed. 1888, chap. 43, § 4192,e):—

§ 1. No individual, company or corporation, now or hereafter owning, controlling or operating any telephone line in operation in this State, shall be allowed to charge, collect or receive, as rental for the use of such telephones, a sum exceeding three dollars per month, where one telephone only is rented by one individual, company or corporation. Where two or more telephones are rented by the same individual, company or corporation, the rental per month for each telephone so rented shall not exceed two dollars and fifty cents per month.

§ 2. Where any two cities or villages are connected by wire, operated or owned by any individual, company or corporation, the price for the use of any telephone, for the purpose of conversation between such cities or villages, shall not exceed fifteen cents for the first five minutes, and for each additional five minutes no sum exceeding five cents shall be charged, collected or received.

§ 3. Any owner, operator, agent, or other person, who shall charge, collect or receive for the use of any telephone, any sum in excess of the rates fixed by this act, shall be deemed guilty of a public offense, and, on conviction, shall be fined in any sum not exceeding twenty-five dollars.

Since the cases cited (*ante*, page 73.), one Johnson was indicted, tried and convicted in the circuit court of Knox county for charging a rental in excess of the statutory provisions, being the owner of a telephone line in the city of Vincennes: *Johnson v. State*, S. Ct. Ind., January 24, 1888.

The conviction was based upon an attempt to evade the statute, by charging the excess as rental for use by "nonsubscribers," without regard to the number of times the telephone was so used, and even if it were not so used at all. The court distinctly affirm the constitutionality of the Statute and their former rulings in *Hockett v. State* (1885), 105 Ind. 599, and *Telephone Co. v. Bradbury* (1885), 106 Id. 1.

The legislature has since been appealed to, and, by an act approved February 27, 1889, repealed the Statute of 1885, "an emergency existing for the immediate taking effect" of the repeal.

Kentucky raises part of her revenue from telephone companies, the General Statutes (ed. 1888, p. 1046), Art. IV., § 5, providing—

§ 5 The president or general manager of every telephone company, on the first day of July in each and every year, shall report to the Auditor the gross amount of the receipts, and shall pay the Auditor one-fourth of one per cent. on the gross receipts of his company, on all its business within this Commonwealth, in lieu of all other State tax; and the Auditor shall give and deliver his receipt of any and all taxes so paid.

Maryland has provided for telephone companies by amendments to her Revised Code of the Public General Laws, title xxiii., art. xi. (ed. 1878, p. 317); ch. 360, of the Laws of 1884, p. 481 (in effect from April 8, 1884), providing that corporations might be formed—

Sec. 24. Class II. For constructing, owning or operating telegraph or telephone lines in this State, where the principal office of said corporation is located in this State.

And ch. 161, of the Laws of 1886, p. 265 (in effect from April 7, 1886), provide, also, for the formation of corporations—

Sec. 24. Class H. A. For the transaction of any business in which electricity, over or through wires, may be applied to any useful purpose.

The general provisions for the construction, operation and ownership of telegraph lines, were also extended by the above mentioned Law of 1884, by adding a new section—

Sec. 136. A. The provisions of the preceding sections, numbered one hundred and twenty-seven to one hundred and thirty-six inclusive, in relation to telegraph companies, shall likewise apply to and have full force and effect in respect to telephone companies created under the provisions of this act.

And by the above mentioned Law of 1886, by adding a new section—

Sec. 175. A. Any corporations formed under class eleven of section twenty-four of the act of which this act is amendatory, or under class eleven A. of section twenty-four of the act of which this act is amendatory, as said section and class may have been or may be hereafter amended, shall have the powers which are conferred upon telegraph companies incorporated under said act, of which this act is amendatory, by the one hundred and twenty ninth section of said last mentioned

act, and may construct and lay any part of its said line or lines under ground, on any route on which it is authorized to construct such lines, in whole or in part, above ground, and may acquire by condemnation any easements or interests in land which may be necessary to give effect to the purposes for which such corporation was formed, in the manner set forth in sections one hundred and seventy to one hundred and seventy-five, both sections included, of the said act of which this act is amendatory.

SEC. 175. B. *Provided, however,* That all corporations incorporated, or to be incorporated, by virtue of said section twenty-four, class eleven, or by virtue of said section twenty-four, class eleven A., except such corporations as are now in practical operation and have laid or constructed their lines, or any part thereof, in the city of Baltimore, shall, before using the streets or highways of Baltimore city, either the surface or the ground beneath the same, obtain a special grant from the General Assembly of Maryland, and the assent and approval of the Mayor and City Council of Baltimore city.

Minnesota provides for the incorporation of telephone companies, under a general law (Gen. Stat. vol. 2, p. 301, ch. 34, title 1, § 1, as amended by acts of 1875, c. 14, § 1; 1885, c. 18; 1887, c. 161)—

§ 1. Any number of persons, not less than five, may associate themselves and become incorporated, for the purpose of building, improving, and operating railways, telegraphs, pneumatic tube lines, subway conduits for the passage, operation and repair of electric and other lines or pipes, canals, or slack-water navigation, upon any river, bay or lake, and all works of internal improvement which require the taking of private property, or any easement therein; * * * * *

The use of public highways has been conferred (Gen. Stat. vol. 2, p. 313, ch. 34, title 1, § 42, as amended by act of 1881, c. 73, § 1)—

§ 42. Any telegraph or telephone corporation, organized under this title, has power and right to use the public roads and highways in this State, on the line of their route, for the purpose of erecting posts or poles on or along the same, to sustain the wires or fixtures; *provided*, that the same shall be so located as in no way to interfere with the safety or convenience of ordinary travel, on or over said roads or highways.

Mississippi has sought to "encourage and facilitate the construction of telegraph, telephone, and other like lines," by an Act, entitled as above, and approved, March 16, 1886 (Laws, p. 93.)—

SEC. 1. That any telegraph or telephone company, chartered or incorporated by the laws of this or any other State of the United States, shall, upon making due compensation, as hereinafter provided, have the right to construct, maintain and

operate telegraph or telephone lines through any public lands of this State, and on across, and along all highways, streets and roads, and across and under any navigable waters, and on, along, [and] upon the right of way and structures of any railroad, and, in case of necessity, on, under, or over any private lands in this State; *provided*, that the posts, arms, insulators, and other fixtures of such telegraph or telephone lines be so erected, placed and maintained as not to obstruct or interfere with the ordinary use of such highways, railroads, streets or water, or with the convenience of any land owner, more than may be unavoidable.

SEC. 2. That whenever any such telegraph or telephone company desires to construct its lines on, along or upon the right of way and structures of any railroad, or upon or along the roadway of any incorporated turnpike, or in case it should be necessary to construct the same under, on, or over any private land in this State, the said telegraph or telephone company shall, by its agents, have the right peaceably to enter upon and survey, locate and lay out its said lines thereon, and may contract with the owner or owners of any such railroad for the use of its right of way and structures, or with any turnpike company for the use of its right of way, for telegraph or telephone purposes, and may agree and contract with the owner of any land for an easement therein, for the purpose of constructing, maintaining and operating its lines as herein provided; and in case said lands belong to the estate of any deceased person, then said company may agree and contract with the executor or administrators thereof, and if the same belongs to a person *non compos mentis* or a minor, then with the guardian; or in case said land be held by trustees of school sections, or any other trustees, then with such trustees; said executors, administrators, guardians and trustees being hereby declared competent to make such contracts, which shall be binding upon all parties in interest; and said executors, administrators, and guardians shall be liable in their respective bonds, to those interested for any money received by them under said contracts or agreements; and, if the parties and such company prefer, the question of such compensation shall be referred to arbitrators, mutually chosen, whose award, or, in case of disagreement, that of the umpire, shall be binding between the parties.

SEC. 3. That in case any telegraph or telephone company having the rights and privileges herein granted, for any cause shall not agree with the owner or owners of any land, or with the executor, administrator, guardian or trustees of the estate to which the same belongs, or with the owners, lessees or managers of any railroad or incorporated turnpike, on or in which an easement, right or privilege is sought, such telegraph or telephone company may file its petition in the office of the Clerk of the Circuit Court of the county in which said land is located; or in case of a railroad or turnpike, then in the office of the Circuit Clerk of any county in which any portion of the said railroad or turnpike may be located, or through which the same may run. Said petition shall designate the land or railroad and structures or turnpikes, as the case may be, and particular use, right, easement or privilege sought to be condemned. It shall also give the name of the petitioner, and shall give the place of residence, if the same be known, of the name or names [*sic*] of the reputed owner or owners of said property, or of the executor, administrator, guardian or trustee, and if the name and places of residence of such persons be not known to the petitioner, the petition shall so state; such petition shall be signed and sworn to by an officer, agent or attorney of the telegraph or telephone company.

SEC. 4. That such petition as hereinbefore provided for may be filed at any time, and the proceedings thereunder had shall be *in rem*, against such parcel or parcels of land, or against such railroad and structures or turnpike roadway; such petition and proceedings, in case the lands of private owners are proceeded against, shall only embrace or include in any one proceeding, the lands of one proprietor or owner, in case any right, privilege or easement is claimed or demanded in or along any railroad right of way and structures, or in or along any turnpike, then the property of but one such railroad or turnpike can be embraced in one petition.

SEC. 5. That it shall be the duty of the Clerk, upon the filing of such petition to cause a notice in general terms thereof, and of the time appointed for the inquest, to be served upon the owner or owners of said lands, guardians, executors or administrators or trustees, as hereinbefore provided, to be left at his or her, or their place, or places of residence, at least five days before such assessment, if such parties named in said petition reside in the county; and in case of a railroad or turnpike, the notice may be served upon any agent upon whom notice of any legal proceeding is hereby authorized to be served; if any such owner, or their places of residence are not known or stated in the petition, or if such owners or any of them reside out of the county, such notice shall be published by three consecutive weekly insertions in any newspaper published in the county in which such petition is filed, and if none be published in the county, then in some newspaper published in one of the cities or towns of Mississippi which shall be nearest said property, and a copy of such notice shall be mailed to such interested party by the said Clerk.

SEC. 6. That upon the filing of any such petition, the Clerk shall forthwith issue a writ, commanding the Sheriff to summon and to have in the office of said Clerk, or on or near said land, railroad or turnpike, at the time in the writ to be mentioned, and within ten days, in case the proceeding is against a railroad or turnpike company, or if the owners all reside in the county, and are known, or, if not, then within thirty days, nine good and lawful men, citizens of the county, from whom, and talesmen, if need be, five Commissioners shall be chosen, who shall be sworn by the Sheriff, or his deputy, to well inquire and true assessment make of the due compensation for the cash value and actual damage which the owner or owners of said land, railroad or turnpike company respectively, shall be entitled to have for the appropriation thereof, to the use of the petitioner, as prayed for, and a majority of said Commissioners may render said award; the said Commissioners may hear testimony of witnesses offered by either party, who shall be sworn by the Clerk, as to the cash value of the land sought to be appropriated by the petitioner, and the injury, then necessarily known to result to such owner, railroad or turnpike company, as the necessary and immediate consequence of the appropriation sought to be made by the petitioner, without reference to uncertain and remote benefits or disadvantages that may or may not occur in the future; the Clerk shall take down the testimony in writing, and the Sheriff or his deputy shall preserve order.

SEC. 7. That the said Commissioners may, if they so desire, inspect the road, structure or land, on which an assessment or privilege is sought, and the owners of any land, railroad or turnpike may intervene for their respective interests in the premises, and may have the writ of subpoena issued by the Clerk and executed by the Sheriff, for any witnesses, but no evidence shall be received in respect to the

title or ownership of the property, nor upon any question other than that of the cash value of lands sought to be appropriated by the telegraph or telephone company, and the injuries then necessarily known to result to such owner, railroad or turnpike company, as the necessary and immediate consequence of the appropriation sought.

SEC. 8. That if said commission shall fail to complete its inquiries and make an award the first day assembled, the Sheriff shall adjourn said Commission over from day to day, until the same is completed; and, in the event any of said commissioners shall, after having been sworn, and before the rendition of the award, become unable from sickness or other cause, to continue on said Commission, he may be excused therefrom by the sheriff, and another summoned in his place, who shall be sworn as the others were, and to whom shall be read the testimony of the witnesses who have before that testified in the case, and who shall act in lieu of the Commissioner so excused.

SEC. 9. That the Commissioners, after making their award as hereinbefore provided, shall make and sign a report of their proceedings in the premises, and shall deliver the same to the Sheriff, who, for any informality, may have the same corrected by said Commissioners, and said Sheriff shall make immediate return thereof, with the writ, and his actions thereon, to the said Clerk; and, upon the actual payment in cash, or tender of the same, to the person or company, or the said Clerk for the use of the same, entitled to receive the same, of the whole amount of the award made as hereinbefore directed, the said petitioner or its assigns, shall have the full and perfect right to enter upon the property described in said petition, and to have, possess and enjoy the easements, rights and privileges thereon, as the same are in the petition set forth and claimed; and a full record shall be kept in said Clerk's office, of all proceedings had under this Act.

SEC. 10. That for good cause shown by the petitioner, or any owner, railroad or turnpike company, by motion to the Judge of the Circuit Court [of the] district in which said proceedings were had, a new inquest and assessment may be had; *provided*, said motion shall state the grounds upon which said new inquest is asked, and be supported by the affidavit of the party applying therefor; that the award of the commissioners was contrary to the law and the evidence, and shall have filed therewith a certified copy of all the proceedings had and done on the premises, including a copy of all the evidence, of the hearing of which motion the opposite party shall have at least five days' notice; and said motion must be made within ten days after the rendition of the award, as above provided for, and not after; and if, upon a consideration of the matter, the Judge shall be of the opinion that the commissioners acted upon testimony that was irrelevant or incompetent, and that their award was contrary to the law, and such evidence as was competent and relevant, and that injustice has been done, a new inquest and assessment shall be ordered by him; and he shall order a new writ to issue and another inquest and assessment to be had; as on the first, at a day to be named by him, not less than five nor more than fifteen, after such order; *provided further*, that not more than one new inquest and assessment shall be allowed at the instance of the same party in reference to the same matter; and, *provided further*, that from all orders of said Judge, in reference to any proceedings under this Act, an appeal may be taken to the Supreme Court of this State, within thirty days from the making of any such

order, or from the final order therein made, the appellant being required to give security for the cost of the appeal, as in other cases; but no appeal shall hinder or delay a petitioner, who has paid or tendered to the party or parties, entitled under the award to receive the same, the amount of the award, from constructing and operating their lines on or over said property.

SEC. 11. That the sheriff may act by his regular sworn deputy, or the coroner may act as in other cases provided by law; and for any default of the clerk, sheriff, coroner, commissioner, witnesses or other persons, the penalty prescribed by law for like default in cases pending in the Circuit Court shall be enforced.

SEC. 12. (Provides for the fees of the commissioners and officers.)

SEC. 13. That at the time of filing of said petition, such telegraph or telephone company may be required to give security for the cost of the proceedings.

SEC. 14. (Repeal of inconsistent laws.)

And the Code of 1880, (§ 585, p. 190,) has been amended, "so as to increase the public revenue," by the Act, entitled as above, and approved March 8, 1888, (Laws, p. 17,) by laying a tax—

On each telephone company, seventy-five dollars, and, in addition thereto, on each telephone exchange, with twenty-five or less subscribers, five dollars; on same, with more than twenty-five subscribers or less than fifty subscribers, ten dollars; on same, with fifty subscribers or more, and less than twenty [75?] subscribers, fifteen dollars; on same, with seventy-five subscribers or more, and less than one hundred subscribers, twenty dollars; on same, with one hundred subscribers or more, and less than one hundred and fifty subscribers, thirty dollars; on same, with one hundred and fifty subscribers or more, and less than two hundred, forty dollars; on same, with more than two hundred subscribers, fifty dollars; and this shall be in lieu of all other taxes of telephone companies and telephone exchanges.

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(To be continued.)